

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DEBRA L. GILMORE,

Plaintiff,

DECISION AND ORDER

05-CV-6037L

v.

UNIVERSITY OF ROCHESTER, et al.,

Defendants.

Plaintiff filed a motion to compel (Dkt. #49) and a motion to file a fifth amended complaint (Dkt. #54). This Court had previously referred all pretrial motions to United States Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b).

Magistrate Judge Feldman held oral argument on the motions on May 23, 2008. Magistrate Judge Feldman ruled from the bench on the motions and entered a written order memorializing those rulings on May 30, 2008.

On June 13, 2008, plaintiff filed an objection (Dkt. #59) to Magistrate Judge Feldman's order denying the motion to file an amended complaint.

The proceedings before Magistrate Judge Feldman on May 23, 2008 were tape recorded , and I have listened to the entire taped proceedings which included argument and Magistrate Judge Feldman's rulings.

The standard for review of a Magistrate Judge's decision relative to a motion to amend is whether the Magistrate Judge's decision is clearly erroneous and contrary to law. Plaintiff has failed to demonstrate either. As Magistrate Judge Feldman noted in his oral ruling, the time within which to file an amended complaint has long since lapsed. This action was commenced in 2005 and there appears to be no legitimate reason why the matters alleged in the fifth amended complaint could not have been alleged in the several earlier versions that have been filed. In addition, as Magistrate Judge Feldman noted, there is currently a summary judgment motion pending before this Court with an established schedule for responding to defendants' motion.

CONCLUSION

The order of United States Magistrate Judge Jonathan W. Feldman denying plaintiff's request to file a fifth amended complaint, which was entered on the record May 23, 2008 and confirmed by order, entered May 30, 2008 is affirmed. I deny and reject the objection filed by plaintiff to that order.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
June 17, 2008.